

13. **ISSUE: Re: MACE: HENDERSHOTT ORDERED A SEARCH WARRANT TO
BE WRITTEN FOR COUNTY BOARD OF SUPERVISORS WITHOUT
PROBABLE CAUSE – SUBJECT: HENDERSHOTT**
(Munnell Memo p. 30)

Chief Deputy David Hendershott

H8A. Allegedly, Chief Deputy David Hendershott ordered Lt. Rich Burden, in the presence of Sgt. Jeff Gentry, Deputy Chief Bill Knight and Executive Chief Scott Freeman, to prepare a Search Warrant for the offices of the County Board of Supervisors in connection with reports that the County had paid funds to a vendor for a sweep of County offices for listening devices following a prior MCSO Search Warrant. Burden and others present told Hendershott that there was insufficient probable cause for the Search Warrant, and they refused to prepare what they considered to be illegal search warrant of the offices of the Maricopa County Board of Supervisors.

MUNNELL'S WRITTEN ACCOUNT

Hendershott orders search warrant to be written against County Board of Supervisors without probable cause.

On or about March 19, 2009, Hendershott approached Chief Bill Knight and instructed him to complete a search warrant affidavit right away to conduct a search of all members of the Maricopa County Board of Supervisors. Hendershott's justification was a media report that the Board of Supervisors (BOS) had paid ten thousand dollars (\$10,000) to a vendor to search their offices at 301 West Jefferson, for any listening devices the Sheriff's Office might have installed after the execution of the initial search warrant for the Stapley investigation. The crime, according to Hendershott, was misappropriation of government Funds.

Chief Knight did not believe there was sufficient evidence to request a search warrant so he wanted to discuss the matter with his supervisor, Chief Scott Freeman and the new Commander of the MACE Unit, Lieutenant Rich Burden (Burden had just assigned to the Mace Unit as its new supervisor, two weeks earlier). Freeman and Burden concurred with Knight's opinion that sufficient evidence for a search warrant was lacking. During a subsequent meeting with Hendershott, Burden questioned Hendershott about the source of the information for the proposed search warrant, Hendershott told Burden to "read the goddamn paper!" Burden even countered to Hendershott that we (as in MCSO) swept our own offices at Wells Fargo (19th Floor) for listening devices, which is the same offense we were attempting to investigate the Board of Supervisors for doing.

Hendershott continued to pressure and convince Burden to cooperate by insisting an even more ridiculous theory to establish probable cause for the warrant. He told Burden that the BOS believed that we (MCSO) had left listening devices in their offices, so the crime was attempted theft of our listening devices. Hendershott then said they would have damaged the devices so it would also be attempted criminal damage. Burden replied that we did not install any listening devices, so it clearly could not be used as a potential crime for the purposes of obtaining a search warrant.

1 When Hendershott learned that Burden, Knight, and Freeman did not agree with his decision to
2 proceed with an immediate search warrant, Hendershott then sought out the Sergeant for the Mace
3 Unit, Sergeant Jeff Gentry who reported directly to Lieutenant Burden. While Gentry was enroute
4 to see Hendershott, Freeman, Knight, and Burden were all sitting in Chief Knight's office and
5 Freeman decided that he did not want Gentry to be ambushed by Hendershott. Therefore, Freeman
6 called Gentry to come to Knight's office, before reporting to Hendershott so the four of them
7 could discuss their predicament. Hendershott became impatient waiting for Gentry to arrive and
8 learned that he was in the building; Hendershott walked down the hall and entered Knight's office

9
10 Hendershott sat down and Chief Freeman began to discuss why there was not enough information
11 and facts to complete a search warrant. Hendershott replied to Freeman that he did not want to
12 hear from him. Lieutenant Burden then started to laugh, and went into great detail to explain that
13 there were not enough supporting facts to establish probable cause for a warrant. At one point,
14 Hendershott replied that he would write it (the search warrant) himself. Hendershott was so upset
15 that nobody present would agree with him about the search warrant that he ultimately stood up and
16 left the office. After this refusal by his subordinates to write the warrant, Hendershott commented
17 to Freeman "I'm fresh out of loyal guys, who am I going to get to do this?"

18 19 **NARRATIVE SUMMARY**

20
21 On 3/19/09, Hendershott instructed Chief Knight to prepare a search warrant affidavit
22 immediately for a search of all members of the Maricopa County Board of Supervisors
23 (BOS). The media had just reported that the BOS paid \$10,000 to have their office
24 scanned for listening devices the Sheriff's Office may have installed in relation to the
25 Stapley investigation. Chief Knight, Chief Freeman and Lt. Burden agreed that there
26 was insufficient evidence for a search warrant. Hendershott commented to Freeman,
27 "I'm fresh out of loyal guys, who am I going to get to do this?"

28 29 **WITNESS ACCOUNTS**

30 31 **Frank Munnell**

32 Munnell's source of information relating to this matter comes from Lt. Rick Burden.
33 Munnell's account, based on the information he had received, is set forth on pp. 54-57,
34 Exhibit II 28b. Munnell did indicate that he had two discussions with Burden about the
35 matter, and one of these discussions was surreptitiously recorded.

36 37 38 **Rich Burden**

39 Burden indicated that shortly after he came to MACE, he was asked to go up to Chief
40 Hendershott's office, where Knight and Freeman were also present. He was told about
41 the Board of Supervisors spending a significant sum of money to sweep their office for
42 bugs that MCSO had supposedly planted. Hendershott then explained to him the
43 situation, and indicated that he wanted Burden and his subordinates to prepare a
44 search warrant. Among the persons present, apart from Hendershott, were Burden,
45 Freeman, Gentry and possibly a fifth individual.

46
47
48 Burden's account as to what transpired in that meeting was as follows.

1
2 A. I thought this was a joke. And he said, the County Board of Supervisors, the
3 last time we went up there to do a search warrant, thought we left listening
4 devices or something like that. It's what my intel is telling me, or my inside guy.
5 And I mean, I'm like, we have an inside guy? You know, I'm going to learn all
6 this, but it's going to take me some time to know who all the players are. And he
7 said that the County Board of Supervisors utilized Defender to VHF, UHF
8 airwave sweep a room. And they spent like \$10,000 or \$15,000 or \$30,000 to do
9 this, large sum of money, and misappropriated those funds. I said what were they
10 sweeping for? Well, they think we left bugs in there. So this is what I want you
11 to write. I said, what would you want me to write a search warrant on? Well, if
12 we did put bugs in there, and they would have found them, they would have
13 destroyed them, right? I said, did we have bugs there, or did we have listening
14 devices there, guys, don't think I'm nuts about this. This is what I've been asked
15 to do.

16
17 Q: So what was the response to that question?

18
19 A: Well, I wasn't done asking the question.

20
21 Q: Alright.

22
23 A: I said, did we have bugs there, and if we did, who wrote, did we have it,
24 we had a Title 3, a T3 written to put these devices there? No. No one, no
25 warrant, no on the bugs, none of them, either, they thought we did, that's the
26 beauty behind it. I said what do you want me to write a search warrant on? Well,
27 if they wouldn't have found the bugs, I said, but we didn't have any bugs. No, no,
28 but if they would have, that would have been attempted destruction of County
29 property, destruction of evidence, attempted destruction of evidence. And I
30 started laughing. I'm like, you have got to be kidding me. You have got to be
31 kidding me. (pp. 27-28, Exhibit II 46)

32
33 According to Burden, he realized that Hendershott was being serious. Hendershott told
34 him to read the "fucking paper" or "damn paper," or something to that effect, and to get
35 with Lisa Aubuchon, and that she would show Burden how to write it. Burden asked
36 Hendershott who the victim was, and Hendershott indicated that it was the county. He
37 asked who the suspect was, and Hendershott identified the suspects as the Board of
38 Supervisors, or whoever paid for the bug sweep. Burden considered the task
39 impossible, because it was entirely too broad. He felt that he needed to talk to
40 Freeman.

41
42 Burden then subsequently visited with Freeman and/or Knight, and Burden put the
43 assignment from Hendershott on the back burner. He did ask the Detectives to figure
44 out who the vendor was that did the bug sweep and determine if it was a County
45 approved vendor.

1
2 The next thing Burden knew is that Hendershott was calling Gentry up to his office.
3 Subsequently, they proceeded to Chief Knight's office, and Scott Freeman was present.
4 While they were in the office, Lyzandra Ovist, Hendershott's administrative assistant,
5 came into the office and indicated that Hendershott needed to see Gentry immediately.
6 Subsequently, Hendershott arrived at Knight's office. Burden's colorful description of
7 what transpired is as follows.

8
9 A:There's a, like somebody dropping their heel on a second story
10 building, on a 19th story building, and it's like, boom, boom, boom, boom, and
11 here he comes. And he turns the corner and he's got a sucker in his mouth. Big
12 sucker. Big, one of those gum ones, you know, jawbreaker in the middle. And
13 I'm looking at him, he's looking right then at me and then he looks down at
14 Freeman and Billy Knight, and then he sits down in the chair next to Bill Knight.
15 He goes, come on guys, let's talk about this. And, he goes, we all know what it is.
16 You got this, you got attempted, you got attempted, they have this gear, they
17 believe we have bugs in a building. So they hire somebody to find those bugs.
18 And, if they would have found those bugs, they would have destroyed them, and
19 that's destruction of evidence. Destruction of County property, and we would
20 have had a court order, if we would have put those bugs in we would have had a
21 court order so they would have violated a court order. And I think I'm drooling,
22 actually drooling at this point, going, and Freeman goes, he goes, I think he even
23 identified Chief Freeman by saying, Scott, what'd you got? Scott goes, well,
24 Boss, he goes, you know what, save it. I don't want to hear from a Lake Patrol
25 guy. Quote, unquote, that's pretty close to the quote he said. And I think that was
26 wrong on that thing, whatever he said to Freeman, but he said, I don't want to
27 hear from a Lake Patrol guy. (p. 35, Exhibit II 46)

28
29 Q: Before Freeman could basically give an explanation?

30
31 A: Yeah. Yeah. And then Bill's sitting there with his hands together. It was
32 damn near the cutest thing I've ever seen. But he's got his hands on the table,
33 remember I'm there, DH is here, Gentry is here, to his right, Bill, Freeman, me,
34 and I'm looking. Hendershott is quite a big man and he's sitting in this chair, I
35 mean, and then you got little Billy Knight, and it looks really funny. And, Billy
36 Knight's got his hands up, and he says, "Boss, I can hear what you're saying. I
37 can't see it. Can't see it." And he's got that sucker in his mouth, and he's
38 looking down at Billy Knight. Like that.

39
40 Q: And you're talking about Hendershott?

41
42 A: Yes, Sir. And he looks at Billy Knight, er, looks at me, and I went, and
43 I'll never do this again because, trying to lighten it up, it's very thick in there at
44 this moment. And I said, me? You want me to explain? And he sort of like, sort
45 of canted his head off to the side like, yeah, bring it. What'd you got? And I

1 said, listen, Boss, no, I started off by, I think, you have got to be kidding me. And
2 put a little giggle behind it, you know, like. We have to substantiate a crime. We
3 have to know the culpable mental state to commit that crime, so we can prove
4 intent, all this stuff. We go, and then we got to identify a suspect. Do we have a
5 victim? I said, Boss, we deal with probably cause, and da, da, da, and I went
6 further in depth. And the whole time Freeman's looking at me going, I mean I
7 had Freeman, it was like an oral board.

8
9 Q: You mean Freeman is nodding his head?

10
11 A: Agreeing with what I'm saying. And understanding that when people get
12 up into Deputy Chiefs and they've been there for a while, they start to lose what it
13 really takes to do an investigation. They get used to, do it, and it gets done and
14 wow, I'm good, you know. They forget about all the leg work and that
15 conspiracy theories don't work. Especially in my world. I'm damn near the tip of
16 the spear of this unit and we ain't doing nothing, and these are high profile
17 investigations, it's not being done over my dead body without, what I'm thinking
18 the whole time, Jury appeal. So, he, after I finished, and I said something to the
19 effect of, as far as I'm concerned Boss, it's not that, we can't do this. I can't have
20 that search warrant on your desk tomorrow morning at 7:00 a.m. He goes, he
21 starts to go, well, I'll write the damn thing. And, again me, I think I said
22 something, I'd like to see that. And...

23
24 Q: That's what you said?

25
26 A: Something to that effect, I'd like to see that. And I think, a little giggling
27 was going on, and people were like, you know, like Freeman is adjusting in his
28 seat, and Bill Knight's moving away. You know, there was a lot of movement at
29 that moment and then Gentry's taking notes. I think DH, Hendershott says to
30 Gentry, take these notes. This is how we'll write it. You're fined, da, da, I said,
31 Jeff, quit writing. I'm serious, we don't have this, Boss. And he went (makes
32 noise), bit right through that jawbreaker type thing, stood up, looked right at Bill
33 Knight, looked at Freeman, looked at me, and said, I'm surrounded by a bunch of
34 non-believers, and out the door he went. I said, Jeff, put that note pad away.
35 What the hell just happened?

36
37 Q: That's what you said?

38
39 A: What the hell is going on here, 'cause I'm a little pissed. I come from a
40 great investigative unit, I'm here. Is this how this shit runs? And Freeman goes,
41 Richie, I don't know what to say. So, well, how long do we got? He goes,
42 probably not long. I said, I just got told that downstairs. The phone calls started
43 after that. Two, three o'clock, is when that meeting took place. I'm sorry, guys.
44 The first one took place at 10 to 1, this one took place 1 to 3, somewhere in there,

1 and the phone calls started. You know, at about 4 o'clock. (Pp. 35-36, Exhibit
2 II46)
3

4 Burden indicated that during the course of this meeting, there was discussion about a
5 different search warrant that had been prepared. According to Burden's subordinates,
6 the search warrant that the MACE Detectives had prepared was seven pages long, and
7 then Lisa Aubuchon expanded upon the search warrant until it was about 21 pages.
8 Burden thought that this search warrant concerned some sort of real property issue, and
9 may have concerned Stapley and/or Conley Wolfswinkel.

10
11 When asked about it, Aubuchon indicated that she had not authored it. Burden
12 considered the search warrant affidavit to be "more of a media release or a public
13 information release." Burden claimed that he had never read a search warrant affidavit
14 like that in his career. Aubuchon said in the meeting, "if we can't prosecute them in a
15 court of law we'll prosecute them in the media." (p. 38, Exhibit II46)
16

17 According to Burden, after the meeting with Aubuchon, he began receiving a series of
18 telephone calls from Hendershott. He believed the first call came in the afternoon.
19 Burden's recollection of this call is as follows, again in language that cannot be
20 duplicated.
21

22 I think about 5:00 I got a phone call from DH and he said, Richie, Dave
23 Hendershott. Listen, I need you to get that search warrant on my desk by 7:00
24 a.m. tomorrow morning. And just work with Lisa. She, I said, are you telling
25 me to burn the midnight oil to get this done, or something like that, and God
26 damn it, Richie, just have that search warrant on my desk. There was a lot more,
27 guys, I can't recall it. I'm flustered. I'm exhausted from the day. Mentally.
28 'Cause this is not a joke. He wants this done. So, I'm flabbergasted. I said, it's
29 not that we can't get it done. We've already served a subpoena that day also, to
30 find out, like I told you way earlier. We served a subpoena that day or the day
31 before, for the vendor. (P. 38, Exhibit II46)
32

33 Burden went on to describe how he had gotten a subpoena out to the county, to identify
34 the vendor, which he felt was the first step that needed to be done. He continued
35 relating to his conversations with Hendershott.
36

37 A: Yeah. This is the proper way. And this is called an investigation. And it
38 takes time. And I said, look, Boss, I've got a subpoena in to identify the vendor.
39 That's what we've got to first do. And, then he would talk real loud. And then,
40 'cause I would just take the phone from here, my ear, and then away like that, as
41 he's getting real loud. And he'd quiet, I'd say, look, Boss, as soon as that
42 subpoena comes in I'll find out who the personnel were that did the sweep, and
43 then we'll do an interview. And in that interview we'll identify what they were
44 told. Maybe we'll come up with a motive, 'cause I don't even have a motive.
45 You know, did somebody tell them that we planted bugs, did they believe in this,

1 because we didn't, it's really, I've never dealt with a case like that. (P.39, Exhibit
2 II46)

3
4 Again, Burden indicated that, according to Hendershott, MCSO had not put any listening
5 devices in the Board of Supervisors offices, but the County believed that MCSO had
6 done so.

7
8 In any event, Burden continued with comments about his telephone discussion with
9 Hendershott after the meeting with Aubuchon.

10
11 A: I told him that we served it and we should be getting it back and he told
12 me to have that search warrant on his desk. I said, Boss, it's not going to happen.
13 I don't have anybody down there working. We have nothing to work. We have
14 nobody to interview. And, God, it was, God damn it, I don't know verbatim, just
15 get it done, you better have it on my desk by 7:00 a.m. And there was another
16 phone call, about the same. And another one. About the same. And I've had it.
17 (P.40, Exhibit II46)

18
19 Subsequently, Burden after having these phone calls with Hendershott, Burden called
20 Freeman and Knight and told them about the telephone conversation with Hendershott.
21 Freeman called Burden back and told him that Hendershott was not taking Freeman's
22 calls. He asked Freeman if Freeman wanted Burden to go down to the office and write
23 the search warrant affidavit that Hendershott wanted, and Freeman told him that, no, he
24 was doing the right thing by not doing so.

25
26 Burden also called Brian Sands, and asked if he could come over and talk. Burden then
27 went to Sands' house, explained the situation to Brian Sands, he suggested that Burden
28 explain to Hendershott what he wanted to do, and tell Hendershott that he would get
29 back with him.

30
31 While Burden was at Sands' house, Hendershott called Burden again. Burden
32 described what happened from that point forward.

33
34 WC: He called your cell, again?

35
36 A: And, I said, it's him. He goes, Sands went like that, like, you know, leave
37 me out of it. And, so I take it and that was the first time, he's yelling at me, and
38 yeah, okay, what time is it? Seven? Eight? And he said something to the effect,
39 have you got that search warrant done? And I said, Boss, listen to me, listen to
40 me. Bla, bla, bla, he's going crazy. I said listen to me. It's not going to happen
41 tonight. And it's not going to happen by 7:00 a.m. Just going off on the other
42 end. I said it's going to take some investigation, and I wait for him to stop, 'cause
43 he's yelling. I don't know what he's saying. Well, I sort of do, but it's just, I
44 want the search warrant on my desk, something like that. I said, it's going to take
45 some investigation. We're going to get on it Monday morning. Or, I don't even

1 know what day of the week this is. We'll be on it tomorrow morning. I don't
2 know what it is, you know. I'm thinking it's a Friday, due to the fact that I show
3 up Monday and there's the subpoena. It's there. You know. So it's why I'm
4 going to go with a Friday. And I said, it's going to take more investigation. I'm
5 looking at Sands going, he's like, he sort of walked away, you know, trying to
6 leave me alone, you know. He probably hears some it. But, and I take one and he
7 hangs up on me. So he hung up on me.

8
9 Q: Hendershott hung up on you?

10
11 A: Yes, Sir. And then I got another phone call from him before I left Sands, I
12 think, maybe not. Maybe I already left, I don't recall. I know I got one phone
13 call at Sands. So, I headed home and at some point I might have been even
14 driving. Guys, it's a blur. I get another phone call and he is irate. Beyond
15 himself. And yelling at me. And then he would go real quiet. So he'd yell at me
16 and then he'd get real quiet. I am telling you, hear me good, you know, that type
17 of language, real slow.

18
19 Q: Well, what is he telling you at this point, Rich?

20
21 A: You'd better have, I'm telling you, you'd better have that search warrant
22 on my desk at 7:00 a.m.

23
24 Q: So how many times had you heard him say that before?

25
26 A: Probably four, three or four. Five, six.

27
28 Q: In this conversation, or I'm talking about ...

29
30 A: Throughout the day, six, seven times, you know. And there's just no way.
31 I have nothing. Nothing. I hope you guys understand where I'm coming from. I
32 had nothing. This is ridiculous. And not that it can't be done, it's just that I can't
33 go based off a news article, unless you guys know a better way to violate
34 somebody's rights. I'm not doing it. And I get home, and I lived by myself at the
35 time, my daughter's going to college, and she's at her mom's on this weekend.
36 So I'm home by myself, and so I open up a 12-pack. I don't open a beer I open a
37 12-pack. And I figure I'm going to just drown this a little bit. And so I had, I
38 don't drink hard liquor, but there was some Jamison Irish Whiskey in there, so I
39 had a couple of shots of that, and there's another phone call. I think I got back at
40 him a little bit and I said, you know, he called threatening, I don't know if it's
41 threats, it's just Dave Hendershott, guys, and he's just telling me I was, get the
42 search warrant done, and it's just the same old shit. He's beyond himself, you
43 know. And I'm not really happy about talking about this, because that's my boss,
44 you know, but I think he's just lost concept at that time what a search warrant,
45 what it takes. And I told him, I said, look, Boss, I've had four or five or six beers,

1 and a couple of shots of whiskey and he hung up on me. Well, this time I called
2 him back. And I told him, first words out of my mouth is, don't ever hang up on
3 me again. And, he told me that if I don't get this done, he's going to machine gun
4 me. I think somewhere in that thing it said shotgun me or it said, I don't
5 remember exactly what it was, but it was "I will machine gun not only you, I will
6 machine gun everybody if that search warrant is not on my desk." And I said,
7 machine gun? And he hung up on me. And I called him back. And at the same
8 time I'm drinking a beer and I'm waiting and waiting, he finally picks it up. He
9 goes, listen to me, and listen to me good, you better have, and this is around 9:00
10 and my skin's crawling and I'm pissed, and I know I'm done. And he said,
11 machine gun you, I'm going to machine gun every one of you. (Pp. 41-42,
12 Exhibit II46)

13
14 Burden thought that the "machine gunning" victims were going to be Burden and the
15 Chiefs being relieved of MACE responsibilities. Burden then received another phone
16 call from Hendershott, described as follows.

17
18 A: And then about, then we ended that call somehow and at about 10:20,
19 he calls me back and said, do you have that search warrant done? He might even
20 had said this is Dave Hendershott. Do you have that search warrant done? I said
21 there is nothing in this world that's going to make me do that fuckin', that search,
22 I might even have said fucking, but I said there's nothing in this world that's
23 going to get that search warrant done tonight, Boss, and it ain't going to be there
24 at 7:00 a.m. You better fucking have that search warrant on my desk at 7:00 a.m.
25 or I'll machine gun all of you. And I said then, fucking pull the trigger, like that,
26 and fucking just kept hitting the fucking end button, end button, end button, I
27 ripped the fucking battery out, phone one way and battery the other way. And I
28 think I screamed fuck you, as loud as I could in my house, and then I went for a
29 walk around the park with my dog. And that was the last conversation I had with
30 Dave Hendershott. (p. 43, Exhibit II46)

31
32 Burden believes that all of these events took place on a Friday. Burden indicated that
33 the following Monday, when he arrived at the office, everyone was looking at him as
34 though they had "seen a ghost." (p. 44, Exhibit II46) He heard that the subpoena, to
35 identify the vendor, had been served. Burden went up to Freeman's office, and found
36 Knight and Freeman conversing. Burden had with him the results of the search warrant.
37 As it turns out, Freeman already had a copy, because Hendershott had come in earlier,
38 slapped the document on Freeman's desk, and said, "Do you want me to do the rest of
39 the investigation for you?" (p. 44, Exhibit II46)

40
41 Subsequently, Burden, Freeman and Knight were called up to Hendershott's office.
42 Freeman and Knight went in, and Burden stayed outside the office, waiting.
43 Subsequently, Jimmy Miller came around the corner, and Miller asked him whether he
44 was experiencing any stress, and how he was sleeping, and whether he had been
45 getting any phone calls.

1
2 Subsequently, the door to Hendershott's office opened and Freeman came out with
3 Knight. Freeman, Knight and Burden took the elevator downstairs, and went to Tom's
4 Tavern. While they were having an iced tea, Freeman told Burden that he had been
5 "fired" (removed from MACE responsibilities), and he needed to get his possessions out
6 of the building as quickly as possible. Subsequently, Bill Knight, who had been smiling
7 at Burden, told Burden that he and Scott Freeman had also been "fired." Burden was
8 concerned because he had basically lost his command of the MACE unit, but Freeman
9 told him that he could go anywhere in the office he wanted to, according to what
10 Hendershott had said. They also indicated that Jimmy Miller was going to be
11 reassuming command over MACE. According to Burden, shortly thereafter, Miller
12 retired, and Terry Young was asked to take over after Jimmy Miller retired. Also
13 transferred out of MACE were Sgt. Jeff Gentry and his detectives, who had been
14 brought into MACE shortly before Burden. They were going to return to Threats and to
15 assist Narcotics, with the exception of one individual, Casey Rodamacher, who was
16 going to stay in MACE. According to Burden, Gentry and his detectives were ecstatic
17 that they were being transferred out of MACE. Eventually, Burden was transferred to
18 Enforcement Support, because the Lieutenant there, because Chuck Siemens wanted
19 to move to a different division. Approximately four to eight months later, Burden was
20 transferred to Patrol District 4 as a Commander.

21
22 Burden does not know if the search warrant affidavit, for the Board of Supervisors, was
23 ever prepared. He believes it was a "dead issue" after Burden's meeting with Lisa
24 Aubuchon, and "it started to go downhill real bad" from there. (p. 50, Exhibit II46)

25
26 **Rich Johnson**

27
28 Sgt. Johnson had no recollection of the actual meeting where Hendershott ordered a
29 search warrant to be issued, but he was told about the meeting by those who were
30 present. Johnson understood that Hendershott was looking for information relating to
31 procurement of a contractor to come look for devices that county principals, county
32 administrators, Boards of Supervisors and so forth and so on, had placed in the BOS
33 offices. To Johnson's knowledge, there were never any bugs planted in the BOS
34 building, which Hendershott should have known.

35
36 **Bill Knight**

37
38 Deputy Chief Knight said that was an article in the *Arizona Republic*, reflecting that the
39 Board of Supervisor's requested to spend \$10,000 to have an outside vendor sweep the
40 entire 10th floor for bugs. Hendershott saw the article and went to Knight's office, where
41 Freeman, Burden and Gentry were. Hendershott directed them to draft a search
42 warrant based on the contents of the *Arizona Republic* article. Knight advises that he
43 and the others looked at each other, paused for a moment and asked Hendershott, "Are
44 you serious?" Knight's thoughts were that they could not write a warrant based on
45 information in a newspaper article. Hendershott argued with the men, and then told

1 Burden, Gentry, Freeman and Knight, "I got to go get some guys that are capable of
2 taking care of this shit," or words to that effect, essentially implying that they were not
3 team players. Knight said, "The whole time, I'm thinking in my head, why the hell would
4 we investigate them for bug sweeping, when we've done that damn thing two or three
5 times on our own floor. At least. Paid for a vendor to come in and do that stuff. It was
6 coordinated by Aaron Brown." (p. 17, Exhibit II21) Knight, however, did not have any
7 details about the sweeps coordinated by Brown.

8
9 The investigative team confirmed with Knight that it came to light Hendershott's logic for
10 being upset, as he claimed that a vendor would destroy any bugging equipment they
11 found, which would be causing criminal damage to County equipment. Knight rebutted
12 by pointing out that they lost tracking devices all the time. Knight indicated that he had
13 control over that particular group at that time and said that there were not any listening
14 devices on the 10th floor. Knight, Freeman, Gentry and Burden then told Hendershott
15 that they agreed to look into the situation to ensure that BOS had used the appropriate
16 competitive bidding and not committed any procurement code violations, but advised
17 Hendershott that they simply could not write a search warrant based upon what was in
18 the article. Knight did not know if the subject was dropped at that point and was not
19 aware of Hendershott contacting any of his Sergeants directly.

20
21 Deputy Chief Knight indicated that he and Scott Freeman were called into Chief
22 Hendershott's office and basically fired from MACE during the investigation of the Board
23 of Supervisors. Hendershott called Freeman and Knight into his office and Knight said
24 he could tell by Hendershott's demeanor, body language and tone of his voice that
25 Hendershott was "obviously pissed." Hendershott went into a verbal tirade.

26
27 A:And he pretty much told us, we're in the middle of World War fucking
28 III right now with the Board of Supervisors, and you two guys are fucking things
29 up. You're out. And I went, okay. Inside I'm thinking, what a fucking relief.
30 Thank God. And then secondary to that, he said, and I want you to get that
31 incompetent motherfucker Richie Burden the hell out of there right now. And all
32 those piss poor fucking people, referring to the Threats guys, and he said Jeff
33 Gentry and all of his Detectives, get them the fuck out of there, too. You guys are
34 fucking everything up. And reiterated, I'm in the middle of World War III and I
35 can't get shit done around here. And that was the extent of the conversation. (p.
36 28, Exhibit II21)

37 38 Terry Young

39
40 What Young knows about this basically, is from conversation that he had with Bill Knight
41 and Scott Freeman in Bill Knight's office, after Hendershott had asked them to prepare
42 a search warrant. Terry Young's comments were as follows.

43
44 A: And I was walking down the hallway at some point during that time
45 frame, Scott and Bill were in Bill Knight's office, looking at Title 13 stuff and

1 having a discussion and just because we typically associate and share things, I
2 said, what are you guys doing? They indicated that the Chief wanted a search
3 warrant, it had something to do with bug sweeps. I wasn't involved in that arena,
4 so none of it, you know, make a whole lot of difference to me, but I do remember
5 the crux of it being that in looking at the Title 13, and they were going, there's
6 nothing here to warrant us doing this and whether it was Bill or Scott commented
7 to me, you know, it's, Dave wants us to do a search warrant based on some article
8 in the newspaper that we haven't, you know, verified that the source, or the
9 reliability of the source, it's just, it was in the newspaper, so just take that out and
10 put it in your affidavit and let's do the search warrant. So they were at a point
11 where they were discussing, we're going to have to put our heads together, you
12 know, figure out how we're going to address this and then go tell him, based on
13 these things, we're not doing the search warrant. So, that's really about all I know
14 about that. (p. 39, Exhibit II45a)

15
16 **David Hendershott**

17
18 According to Hendershott, information had surfaced that Don Stapley's secretary was
19 doing work for Stapley's private business, and acting as statutory agent for Stapley's
20 private business, out of the County building, and that there may have been other issues.
21 I informed him, however, that based on our understanding, the issue had to do with the
22 Board of Supervisors having paid a vendor to search their offices for listening devices.
23 Hendershott indicated that he had indeed requested the search warrant, but it was
24 never accomplished because, as he put it, "I did meet with the guys and I didn't feel that
25 we had probable cause to do it, so we didn't do it." (p. 2, Exhibit II16d) More
26 specifically, Hendershott's comments were as follows.

27
28 A: And I, in reading this I will tell you that I have an open conversation with
29 my command Officers all the time and they tell me that, if they tell me that they
30 don't think there's probable cause I'm sure that I would quiz them based on what,
31 based on their theory but at the end of the day I will tell you that in a non-
32 threatening, in a non-threatening mode, I and I think in this case did disagree with
33 it? Yes with what they did but I accepted the fact that they had concerns and then
34 they walked out knowing they wouldn't do the search warrant. Now what I'm
35 talking about is a different situation that involved, oh that was on the computer
36 company in Cisco. (p. 2, Exhibit II16d)

37
38 In the investigative interview, we reviewed p. 31 of the Munnell Memo, which reflects
39 that "during his subsequent meeting with Hendershott, Burden questioned Hendershott
40 about the source of the information for the proposed search warrant. Hendershott told
41 Burden, "read the god damn paper." Hendershott's detailed comments about what had
42 happened, after his denial that he made the statement to Burden, was as follows.

43
44 A: All I remember is, is we discussed the issue of the use of taxpayer money
45 to, well so much to remember, anyway I'll catch it here in a minute. The use of

1 tax payer money to allegedly, I don't know what version of the story they were
2 on, the second, third, or fourth version but they used tax payer money to do a
3 sweep looking for our supposed listening devices and so you know whereas, in a
4 normal circumstance an office surely could bring someone in and sweep but I am
5 aware of the fact that we had brought Andy Kunasek, I want to say three hours, or
6 three days earlier before this. And this guy coming in to sweep was specifically
7 generated after Stapley was served with his indictment and Kunasek and others
8 were talked to so it was definitely clear in my mind and in others okay that, that
9 they had in fact attempted to see, to basically they spent tax payer money to see if
10 they were being listened to. And if you read the interchange between what was
11 going on and Steve Wetzal and everyone else you would see that there is more,
12 there is absolutely more than sufficient probable cause that they were doing this
13 as a cover up. And they wanted to keep it quiet, and their story, I believe there's
14 four versions of their story, which if you want me to tell you this is what the
15 Board of Supervisors said but it's inconsequential to the search warrant. We
16 discussed the search warrant, I thought there was probable cause to look for
17 documents relating to this payment of ten thousand or fourteen thousand dollars to
18 pay this outside firm to check for supposedly our listening devices. Now the fact
19 that we didn't put any listening devices and of course they would be court ordered
20 listening devices, okay in doesn't matter. If the Sheriff, me, or anybody else at
21 all, shoot I'm being investigated by the FBI or something like that and I go ahead
22 and say you know what I think I need to have my office swept for bugs and I
23 really am doing it for the intent of seeing if I am being listened to for over
24 criminal investigation which is, which is I will tell you that was Kunasek and
25 everybody else's concern because all of this happened within I want to say three
26 or four days of Stapley being served with his indictments, the first round of
27 indictments and Kunasek was brought and there was a collateral investigation that
28 had to do with a grand jury leak of Stapley's indictment and the best way for me
29 to put it in perspective is, is I'll give you the days but I don't remember the dates.
30 On a Thursday Stapley was officially indicted by a grand jury in Maricopa
31 County. I want to say that we knew that Stapley wasn't in Istanbul and we found
32 out that he was out of the country in Istanbul for County business with his family.
33 And I'm not going to go into that because it's also involved in the criminal
34 investigation of Don Stapley. (pp. 3-4, Exhibit II16d)

35
36 It is interesting to note that, at this point in the interview, Hendershott began making
37 assertions that called into question Burden's credibility. Hendershott indicated that
38 Lieutenant Burden "tended to mirror the thoughts of his supervisors." He cited it as a
39 possibility, with respect to comments from Richie Burden, that "Richie Burden was
40 sitting around bull shitting with everybody, having a conversation, and just wanted to
41 agree in whatever group, you know see Richie worked for Frank for years in Community
42 Services, for years. And so he had that one on one relationship." Hendershott also
43 claimed that, after the Munnell Memo was released, Burden came into Hendershott's
44 office, and said that he did not like what was happening (to Hendershott). (p. 5, Exhibit

1 II16d) Hendershott also claims that Brian Sands was told by Richie Burden that
2 Burden felt that Munnell was trying to "set him up."
3

4 Hendershott denied that he had a number of telephone conversations into the evening
5 with Burden, and instructed him to have the search warrant on his desk the following
6 morning at 7:00 a.m. Hendershott, in fact, stated, "I don't remember ever having a
7 telephone conversation" with Burden.
8

9 When asked the question again, Hendershott again asserted that he did not recall
10 having any kind of conversation with Burden, while acknowledging that he may have
11 had a conversation. (p. 5, Exhibit II16d) Hendershott does acknowledge that after their
12 discussion about the merits of the probable cause for the search warrant, he was not
13 happy about their analysis, referring to Knight, Freeman and Burden, apparently, but as
14 Hendershott put it, "I let it go and we did not do a search warrant on those documents."
15 (p. 5, Exhibit II16d)
16

17 With respect to Burden's comments, that Hendershott had a number of telephone
18 conversations with him, into the evening, and repeatedly told him to have the search
19 warrant on Hendershott's desk the following morning, Hendershott's comments were as
20 follows.
21

22 A: I do not remember ever having a conversation where I ordered Richie
23 Burden to have a search warrant on my desk in the morning at any time. If I
24 made phone calls to him, if I did and those would be very easy to find out, if I did
25 because I assume his phone records would show, you know being that we
26 couldn't do a search warrant, it was very important to get these documents about
27 the transactions which, frankly inadvertently the televisions did a follow up story
28 on the very documents that we needed were stuck on TV. and so that's the way
29 the case was able to progress is because of the TV interviews that we had but
30 because we were getting such resistance now I want to tell you this was a very
31 frustrating time for me because Richie Burden, I put him in there as a stop gap in
32 all honesty Richie although a good man a very nice guy, but it was relatively
33 apparent very quickly. Because when I did talk with him when he originally
34 came in, I said Richie I don't want you to do anything but read for the first three
35 weeks, you've got to get this stuff, you've got to get every little nuance in your
36 head or you won't do me any good and I'll be stuck you know having direct
37 anything. He didn't do that, he did not you know when I would see him I'd say
38 Rich how you doing on catching up. Oh you know, he's kind of, he's a very
39 folksy guy, he tends to be, best way because he's in a good mood he tends to
40 kinda act a little bit hillbilly, you know like hey how yah doin' boss. You know
41 that kind of stuff, kind of a jovial guy. Love the guy, he was a big morale builder
42 when he was in Community Services, did a lot of practical jokes. He's a good
43 Detective.... (p. 6, Exhibit III16d)
44

1 Hendershott denies that he had any recollections of calling Burden, on the evening in
2 question, and threatening that Freeman, Knight and Burden had better get on board,
3 and that he threatened to "machine gun" them. Hendershott denied that he had any
4 recollection of saying "I'll machine gun you," while acknowledging that he does tend to
5 "talk a tad grandiose," and further added, "I do that for a reason." Hendershott claimed
6 that he used that "grandiose" language to "lighten the issue." But as he put it, "That
7 would be a way that I would say please read the freaking reports, but kinda lighten it
8 up." (p. 9, Exhibit II16d) He certainly does deny seriously threatening Burden. The
9 bottom line is that Hendershott denied categorically that he would have told Burden that
10 Burden, Knight and Freeman were going to get "machine gunned" or might get
11 transferred out of MACE. Again, Hendershott claimed that Richie Burden may not be
12 unbiased, because he worked for Frank Munnell for a number of years. He suggested
13 the Munnell "probably got Richie to say a whole lot of things and Richie accommodated
14 the conversation." (p. 11, Exhibit II16d)

15
16 The following interchange occurred during the interview.

17
18 BABEU: Do you believe that you used undue influence on your
19 investigators to force their hand to write information or to present information in
20 an application for a search warrant to get a search warrant?

21
22 A: You mean?

23
24 BABEU: Did you personally do that? Do you believe you did that?

25
26 A: I did that reference to Calence but I'd like to tell you the
27 circumstances because and it relates to me knowing more than everybody
28 involved. (p. 7, Exhibit II16d)

29
30 The bottom line is that Hendershott did acknowledge having one or more meetings with
31 personnel in MACE about the search warrant that he wanted on the Board of
32 Supervisors Offices. He denies having any recollection of saying "I'm fresh out of loyal
33 guys. Who am I going to get to do this?", or of saying anything along those lines. When
34 asked if he felt like he was "fresh out of loyal guys," Hendershott's comments were as
35 follows.

36
37 A: I felt very frustrated because the, such a tremendous amount of a, I had
38 leaned so heavily and worked frankly it was like a machine, with Miller, after he
39 left it was just very difficult.... (p. 8, Exhibit II16d)

40
41 Hendershott was asked whether Freeman, Knight and Burden did not agree that there
42 was probable cause for the Board of Supervisors search warrant because they were not
43 sufficiently acquainted with the facts, which is what Hendershott had earlier claimed in
44 the interview. Hendershott's response was as follows.

1 A: Well, I probably felt that way that because you know none of them had all
2 of the facts and had gone through all of the meetings that we had with the County
3 Attorney and understood you know what was happening in the investigation and
4 so you know really Chief Knight and Chief Freeman were kinda like pass through
5 people that yeah if somebody said I don't think we have this and they take it for,
6 and I will tell you that when they did tell me they don't think I accepted it and
7 they didn't do a search warrant, okay. I accepted it. In my opinion there was
8 probable cause. In their opinion it wasn't, I honored that okay, and did we have a
9 conversation about it? Yes. My frustration came because it was so frustrating to
10 deal with Commanders that had no historical knowledge or perspective and so I
11 was flying blind. (p. 9, Exhibit II16d)

12
13 Hendershott denies that he was at the meeting involving Burden and Lisa Aubuchon.
14 When asked if Aubuchon was there under his authority to talk to Burden and other
15 MCSO personnel, and encourage them to proceed with the search warrant (relating to
16 the Board of Supervisors) Hendershott's comments were as follows.

17
18 A: Lisa was there under her own authority and had been there numerous,
19 numerous times on a regular basis because she was not only the Chief prosecutor
20 for Thomas' office she was the main person that was responsible for leading this
21 investigation.... She had a meeting with the new guy Richie Burden and she
22 walked out of there and she called me and she was mad as a hornet because this
23 guy didn't know anything about the case and just basically to be frank was
24 bullshitting her and trying to look good you know and you know like he was oh
25 yeah and then I don't know Richie has you know when you're talking to a female
26 has this tendency to you know say you go girl or something like that. And I'm
27 going to tell you that is not something you do to the Chief prosecutor as I
28 understand it she was extremely well she was very offended by the familiarity of
29 the conversation you know like it wasn't professional.

30
31 Q: You're saying she was offended by Burden's lack of professional behavior
32 toward her?

33
34 A: Yes. And she was mad because he didn't know the first thing about what
35 was going on and it was kind of like I had frustrations because he didn't know
36 what was going on she had frustrations but her responsibility was to lead the
37 group and you know she used to work with Jimmy Miller directly and you know
38 side by side and so she was frustrated. So now I had a very angry Chief
39 prosecutor, I was frustrated and so it was very difficult because it was definitely a
40 key person had to go in there and the last thing I need is for somebody to say
41 something and now I got a prosecutor that's mad because of a comment that was
42 made to her. (p. 14, Exhibit II16d)

43
44 Hendershott indicated that he has no idea if the discussion/meeting that Aubuchon had
45 with Burden had anything to do with the Board of Supervisors search warrant. He

1 reiterated the position that he had taken earlier, that Knight, Freeman and Burden did
2 not think there was probable cause, and Hendershott simply accepted that.
3 Hendershott did not dispute that the meeting between Burden and Aubuchon may have
4 concerned the search warrant affidavit for the Board of Supervisors.

5
6 Hendershott did acknowledge having spoke to Lisa Aubuchon, about the statement
7 attributed to her by Burden, that the Detectives should employ "creative writing" in
8 authoring the search warrant affidavit. Her position, according to Hendershott is that
9 she did not make that comment, and that they had misunderstood. He denied having
10 talked to Aubuchon about another statement attributed to her, namely, "if we can't get
11 him [Stapley] in the courts then we'll try to get him in the media."
12